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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44384
Plaintiff-Respondent,)	
)	Latah County Case No.
v.)	CR-2013-1160
)	
TIMOTHY STEPHENS ZOLBER,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Zolber failed to establish that the district court abused its discretion by revoking his probation and executing his unified sentence of five years, with two years fixed, imposed following his guilty plea to criminal possession of a financial transaction card?

Zolber Has Failed To Establish That The District Court Abused Its Sentencing Discretion

In October of 2013, Zolber pled guilty to criminal possession of a financial transaction card and the district court imposed a sentence of five years, with two years fixed, and retained jurisdiction. (R., pp.88-92) After a period of retained jurisdiction the

district court suspended the sentence and placed Zolber on supervised probation for four years. (R., pp.99-106.) In February of 2016, Zolber's probation officer filed a report of probation, alleging Zolber had violated his probation in eight different ways. (R., pp.107-12.) In June of 2016, Zolber's probation officer filed an addendum to the report violation, alleging eight additional probation violations. (R., pp.183-85.) Zolber admitted to two violations alleged in the original report, and admitted to five violations and a portion of another alleged in the addendum. (R., pp.193-95.) The district court revoked Zolber's probation and executed his sentence. (R., pp.196-200.) Zolber filed a Rule 35 motion, which the district court denied. (R., pp.203-04, 209-13.) Zolber filed a timely notice of appeal from the order revoking probation. (R., pp.214-16.)

Zolber asserts that the district court abused its discretion by revoking his probation in light of his desire to succeed, work ethic, and family support. (Appellant's brief, pp.3-7.) Zolber has failed to establish an abuse of discretion.

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to revoke probation lies within the sound discretion of the district court. State v. Roy, 113 Idaho 388, 392, 744 P.2d, 116, 120 (Ct. App. 1987); State v. Drennen, 122 Idaho 1019, 842 P.2d 698 (Ct. App. 1992). When deciding whether to revoke probation, the district court must consider "whether the probation [was] achieving the goal of rehabilitation and [was] consistent with the protection of society." Drennen, 122 Idaho at 1022, 842 P.2d at 701.

Zolber is not an appropriate candidate for probation. While on probation Zolber violated his probation by leaving the state without permission, consuming alcohol, using heroin on multiple occasions, and being charged with DUI. (R., pp.107-12, 183-85, 193-

95.) Zolber's probation officer reported that Zolber failed multiple urinalysis tests, and a period of discretionary jail time was imposed. (R., p.185.) The probation officer also reported that, on June 4, 2016 Zolber crashed his motorcycle while driving back from Washington where he went to a bar, drank alcohol, and used heroin. (R., p.185.)

At the disposition hearing for Zolber's probation violations, the district court noted Zolber's extensive criminal history, failure to rehabilitate, failure to comply with the law, and the danger he poses to public safety. (Tr., p.132, L.2 – p.136, L.4.) Probation was clearly not serving the purpose of rehabilitation in this case, as evinced by Zolber's failure to make any progress in treatment. Neither was probation achieving the goal of community protection, given Zolber's continued criminal conduct and refusal to comply with the terms of community supervision.

The district court considered all of the relevant information and concluded, "This would have been a lot harder for me, Mr. Zolber, if you hadn't gone out and done what you did while you were released and on probation, but I don't have any confidence that you can comply with society's laws. And when you can't comply with society's laws, I worry about other people's safety." (Tr., p.135, L.24 – p.136, L.4.) Zolber's continued criminal behavior, his refusal to comply with the conditions of community supervision, and his failure to make any rehabilitative progress while in the community did not merit continued probation. Given any reasonable view of the facts, Zolber has failed to establish that the district court abused its discretion by revoking his probation.

Conclusion

The state respectfully requests this Court to affirm the district court's orders revoking probation.

DATED this 24th day of March, 2017.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 24th day of March, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

REED P. ANDERSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General